



THE CITY OF NEW YORK
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December 21, 2023

By ECF

Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Ali Moore v. City of New York, et al.
22-CV-10957 (LGS)

Your Honor:

I am an Assistant Corporation Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and the attorney for defendant the City of New York, David Castro, Nilsa Nivar (formerly Nilsa Patricio), Sanjay Bajnauth, Antonio Castelluccio, David Maldonado, and Kevin Rosas (hereinafter “City Defendants”) in the above-referenced action. City Defendants write pursuant to the Court’s December 11, 2023 Order to provide an update on the status of representation for Defendants Rosas and “Police Officer 718.” *See* ECF No. 121.

This Office now represents Defendant Rosas, and Defendant Rosas joins in City Defendants’ motion to dismiss that was filed on November 8, 2023, and was fully briefed as of December 20, 2023. *See* ECF No. 123.

The Court’s December 11, 2023 Memo Endorsement also ordered City Defendants to provide an update on the status of representation for “Police Officer 718.” The Court has not entered an Order to identify “Police Officer 718” pursuant to *Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997), and, upon information and belief, the police officer with shield number 718 in October 2021 was assigned to the 109th Precinct in Queens and thus would not conceivably have been involved in either of the incidents at issue in this action. However, there is a *Sergeant*, Joseph Angelone, with shield number 718 who was assigned to the 26th Precinct at the time of the incidents at issue in this case.

Assuming Sergeant Angelone is the individual whom plaintiff seeks to sue as “Police Officer 718” in this action, which he has not affirmatively indicated, this Office still cannot represent this individual or move on behalf of Sergeant Angelone because he has not been properly named or served with process in this matter.

City Defendants also note that “Police Officer 718” appears *only* in the case caption and not anywhere in the 4AC’s sections titled “The Parties,” “Factual Allegations,” or in the 14-plus listed causes of action. Consequently, amending the complaint to add Sergeant Angelone would be futile, because the 4AC fails to allege any individualized actions on the part of this individual that would put them on fair notice of the nature of the claims against them. *See* City Def. Mem. in Support of Mot. to Dismiss, Point I, ECF No. 102. For this reason, the Court can sua sponte dismiss the case against “Police Officer 718.”

Plaintiff also should not be permitted to file yet another amended complaint naming Sergeant Angelone as a defendant because plaintiff has already amended his complaint *four times* in this case and has failed each time to allege enough facts to adequately state a claim against this individual. *See, e.g., Melvin v. Cty. of Westchester*, No. 14-CV-2995 (KMK), 2016 U.S. Dist. LEXIS 41120, at *80 n.19 (S.D.N.Y. Mar. 29, 2016) (granting motion to dismiss with prejudice because the plaintiff “already had two bites at the apple, and they have proven fruitless”).

We thank the Court for its time and consideration of this matter.

Respectfully submitted,

Evan J. Gottstein /s/
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cc: Via First Class Mail
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